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August 21, 2003

**Ex Parte Presentation**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: *Application by SBC Communications Inc., et al. for Provision of  
In-Region, InterLATA Services in Michigan, WC Docket No. 03-138*

Dear Ms. Dortch:

On behalf of SBC Communications Inc. ("SBC"), I am writing to notify you that, yesterday, Jim Smith and Rebecca Sparks of SBC met by teleconference with Michelle Carey, Tom Navin, Gina Spade, and Marcus Maher of the Commission's staff to discuss line splitting. Pursuant to a request made during that meeting, following is additional information regarding Michigan Bell's provisioning processes for fulfilling CLEC requests to convert a line-splitting arrangement to a UNE-P arrangement.

As SBC has previously explained,<sup>1</sup> when a CLEC has (or partnering CLECs have) established a line-splitting arrangement, Michigan Bell provisions a stand-alone xDSL-capable loop and a stand-alone switch port to the CLEC's collocation space (or to that of its data CLEC partner). In the event that the DSL service is terminated, and the CLEC wishes to provide service to the end-user through a UNE-P arrangement, it

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<sup>1</sup> See Ex Parte Letter of Geoffrey M. Klineberg on behalf of SBC to Marlene H. Dortch, FCC, Attach. at 4 (July 7, 2003) ("SBC July 7 Ex Parte").

has two options. First, it can perform the work of combining the unbundled loop with the stand-alone switch port itself within its collocation space.<sup>2</sup> Second, it can ask Michigan Bell to do so. If the CLEC asks Michigan Bell to do the work, Michigan Bell does so using the exact same provisioning process as it would if it were converting the customer to Michigan Bell voice service. Specifically, Michigan Bell's Loop Facility Assignment and Control System ("LFACS") selects and assigns a voice-grade loop to provision the UNE-P in the same manner that it would if it were selecting and assigning a loop to Michigan Bell in a retail POTS arrangement.<sup>3</sup>

That process will likely result in the assignment of a new loop to the end-user's address. That is so, however, *not* because SBC insidiously "designed [its systems] in a way that generally *precludes* reassignment of the loop,"<sup>4</sup> but rather because it designed those systems to support a wide variety of services in a nondiscriminatory manner. When Michigan Bell provisions a POTS loop to a customer previously served by a line-splitting arrangement, LFACS selects and assigns the loop on the basis of certain specific engineering design criteria for voice-grade loops.<sup>5</sup> An xDSL-capable loop previously used in a line-splitting arrangement may or may not meet those criteria.<sup>6</sup> Moreover, that loop is unlikely to be available for assignment at the time LFACS selects and assigns the voice-grade loop.<sup>7</sup>

This Commission has made clear time and again that the nondiscrimination requirements of the Telecommunications Act of 1996 ("1996 Act") and the Commission's own rules require Bell companies to treat CLECs in substantially the

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<sup>2</sup> See Chapman Supp. Reply Aff. ¶¶ 15-20 (Supp. Reply App., Tab 3).

<sup>3</sup> See Ex Parte Letter of Geoffrey M. Klineberg on behalf of SBC to Marlene H. Dortch, FCC, Attach. at 1 (July 9, 2003) ("SBC July 9 Ex Parte").

<sup>4</sup> Ex Parte Letter of Richard E. Young on behalf of AT&T to Marlene H. Dortch, FCC, at 3 (Aug. 15, 2003) ("AT&T Aug. 15 Ex Parte").

<sup>5</sup> See SBC July 9 Ex Parte Attach. at 1.

<sup>6</sup> See *id.* Attach. at 1-2.

<sup>7</sup> Because an xDSL-capable loop is a "designed" circuit, the physical disconnection of that loop does not actually occur until five business days after the requested due date. See *id.* Attach. at 2. It is at the conclusion of that "five-day hold" that the loop becomes available for assignment by LFACS. *Id.* AT&T's recent ex parte asserts once again that Michigan Bell's processes in all cases "prohibit CLECs from reusing the same loop." AT&T Aug. 15 Ex Parte at 8. That is false. See, e.g., SBC July 7 Ex Parte Attach. at 5-6. AT&T misquotes SBC's July 9 ex parte for the proposition that "the xDSL-capable loop will *not* be available in the LFACS inventory" whenever a CLEC seeks to convert from line splitting to UNE-P. AT&T Aug. 15 Ex Parte at 4 (distorting SBC July 9 Ex Parte Attach. at 2) (emphasis added by AT&T). In fact, SBC explained that the xDSL-capable loop would not be available for reassignment in LFACS in a specific scenario — *i.e.*, "if the CLEC were to request the same due date on its LSR for the disconnection of the xDSL-capable loop as it requests . . . for establishment of the new UNE-P." SBC July 9 Ex Parte Attach. at 2. If the CLEC requested a due date for the new UNE-P five days after the due date for the disconnect of the xDSL-capable loop, that loop would ordinarily be available for assignment. See SBC July 7 Ex Parte Attach. at 5-6. Even then, however, LFACS would not necessarily select that loop for the new UNE-P. See *id.* Attach. at 6.

same manner as they treat their own retail operations when provisioning UNE-P.<sup>8</sup> As a result, when Michigan Bell provisions a UNE-P arrangement for an end-user previously served in a line-splitting arrangement, it uses the same provisioning processes as it does in the retail context. Specifically, as in the retail context, LFACS surveys the inventory of available loops and selects one that meets various design criteria for voice-grade loops. And, as in the retail context, that process will likely result in the assignment of a new loop, depending in part on whether the xDSL-capable loop is available for assignment in LFACS and on whether it meets the relevant design criteria.

Although it is thus clear that Michigan Bell's provisioning process for converting line-splitting arrangements to UNE-P meets the nondiscrimination requirements of the 1996 Act and the Commission's rules, we now understand that certain CLECs desire a different process that would force the re-use of the existing loop when converting from line splitting to UNE-P. Accordingly, as SBC has emphasized throughout,<sup>9</sup> consistent with its longstanding commitment to facilitate the evolving entry strategies of its wholesale customers, SBC is working to develop and test a potential new process that would, in most cases, force the re-use of the xDSL-capable loop in a line-splitting arrangement when a CLEC requests conversion to UNE-P.<sup>10</sup>

To be sure, the development of this process will take work by both Michigan Bell and the CLECs, and that work will extend beyond the physical process in question. In particular, because this new process will override Michigan Bell's existing

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<sup>8</sup> See, e.g., *California 271 Order*, 17 FCC Rcd 25650, App. C, ¶ 37 (2002) ("A BOC must provision competing carriers' orders for . . . UNE-P services in substantially the same . . . manner as it provisions orders for its own retail customers."); *Massachusetts 271 Order*, 16 FCC Rcd 8988, ¶ 90 (2001) (examining whether Bell company applicant "provisions competing carriers' orders for . . . UNE-P services in substantially the same . . . manner as it provisions orders for its own retail customers," including an examination of "the procedures [the applicant] follows when provisioning competitors' orders"); *Kansas/Oklahoma 271 Order*, 16 FCC Rcd 6237, ¶ 154 (2001) (examining "the procedures SWBT follows when provisioning competitors' orders" and concluding that "SWBT provisions competing carriers' orders for . . . UNE-P services in substantially the same . . . manner as it provisions orders for its own retail customers"). AT&T's recent ex parte asserts that a Bell company's compliance with the nondiscrimination standard is measured not by comparing its retail processes to its wholesale processes, but rather by comparing its treatment of particular types of customers (i.e., CLEC customers served by a line-splitting arrangement) with its treatment of other types of customers (i.e., Bell company customers served by a line-sharing arrangement). See AT&T Aug. 15 Ex Parte at 6. But AT&T can cite no Commission precedent to support this novel view, and it is presumably for this reason that AT&T ultimately argues that the question of nondiscrimination is "irrelevant." *Id.* In fact, as the Commission's orders make clear, the question is highly relevant.

<sup>9</sup> See SBC July 7 Ex Parte Attach. at 6; SBC July 9 Ex Parte Attach. at 2-3; SBC Supp. Reply Comments at 17-18; Chapman Supp. Reply Aff. ¶¶ 27-28.

<sup>10</sup> This evaluation is the result of a request submitted by MCI through the CLEC User Forum, as clarified on a conference call between SBC and interested CLECs on June 25, 2003. See SBC July 9 Ex Parte Attach. at 2-3. This process would also address other, related issues raised by CLECs, such as allowing them to submit the same due date for disconnection of the xDSL-capable loop, disconnection of the unbundled switch port, and establishment of the new UNE-P (overriding the five-day hold requirement for designed circuits).

nondiscriminatory provisioning process to add an element of discrimination in the loop selection criteria between Michigan Bell's retail and wholesale operations, the CLECs, the Michigan commission, and Michigan Bell will all need to work together to ensure that (a) Michigan Bell will not be subject to any resulting claims of discrimination, and (b) the re-use of xDSL-capable loops will not unfairly penalize Michigan Bell in the calculation of those performance measures (and associated remedy payments) designed to ensure nondiscrimination in Michigan Bell's provisioning and maintenance and repair of UNE-P and POTS loops.<sup>11</sup> Although these issues are serious, SBC is confident that they can be overcome and that it can put in place a process that meets the CLECs' needs without subjecting it to unwarranted liability or undermining the integrity of its performance reporting and payment obligations.

Indeed, the delay to date in moving forward with this new process has come not so much from the unwillingness of CLECs to agree to these terms, but rather from their unwillingness to engage in a test of a physical process. For all the comments in this proceeding complaining about Michigan Bell's existing process, one might have expected CLECs to be clamoring to move the new process forward by participating in a test. MCI and SBC have been discussing the possibility of engaging in a test, but it was not until yesterday when MCI, to its credit, confirmed that it was ready to do so. SBC is committed to working with MCI to test a manual process that will permit the re-use of loops in the short term and to develop a longer-term solution that will meet the needs of the broader CLEC community. SBC will work with MCI to construct the parameters of the trial so that the number of circuits involved will not have a material impact on performance measure results.

One additional point is worthy of note. In its recent ex parte, AT&T asserts that Michigan Bell's existing processes for converting a line-splitting arrangement to UNE-P are "unlike any other BOC."<sup>12</sup> To support this sweeping assertion, AT&T points only to Verizon's process in New York. But Verizon's process is the result of a state commission proceeding conducted when a CLEC – in that case, Covad – raised the issue in the ordinary course. The parties then litigated the issue, and the state commission, consistent with its duties under the 1996 Act to resolve such complex, fact-intensive issues, released an order setting forth the parties' respective obligations. AT&T could have taken a similar course in Michigan. Had it done so in a timely fashion, the parties would have had ample opportunity to address the issue either in business-to-business discussions or in litigation before the Michigan PSC. AT&T, however, declined to do so. Indeed, unlike MCI, AT&T continues to this very date to resist SBC's invitation to address this issue through an established CLEC forum or to engage in testing with SBC.<sup>13</sup> The New York example is instructive, then, but not for the reasons stated by AT&T. Rather, when considered in comparison to AT&T's

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<sup>11</sup> See *id.* Attach. at 3.

<sup>12</sup> AT&T Aug. 15 Ex Parte at 4, 5.

<sup>13</sup> See SBC Supp. Reply Comments at 15.

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regulatory gamesmanship, it simply confirms that AT&T's real aim here is not to facilitate competition in the local market, but rather to forestall competition in long-distance.

In accordance with this Commission's Public Notice, DA 03-2039 (June 19, 2003), SBC is filing this letter and its attachments electronically through the Commission's Electronic Comment Filing System.

Yours truly,



Colin S. Stretch

cc: Gina Spade  
Susan Pié  
Rodney Gregg  
Layla Seirafi-Najar  
Qualex International